IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5759 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHHAGANLAL GIRDHARLAL KAPADIA SINCE DED THRO HEIRS AND LRS - Petitioner(s)

Versus

UDAY MOHANTY & 19 - Respondent(s)

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Appearance :

MR UTPAL M PANCHAL for Petitioner(s) : 1,
UNSERVED-REFUSED (N) for Respondent(s) : 1,4 - 20.
NOTICE SERVED BY DS for Respondent(s) : 2,
MR PRASHANT G DESAI for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 09/09/2005

ORAL JUDGMENT

In this petition under Article 226 of the Constitution of India the petitioner, allottee of the lands bearing Final Plot No. 7/B/1 and Final Plot No. 7/B/2 of Town Planning Scheme No.4, Surat, has prayed

for an appropriate writ, order or direction directing the respondent Corporation to get the said Final Plots vacated and hand over the peaceful and vacant possession of the same to the petitioner.

2. The respondents No. 4 to 20 are in illegal occupation and possession of the portion of Final Plot No. 7/A/1 and Final Plot No. 7/B/2 of Town Planning Scheme No.4 and that as they were likely to be affected, this Court by order dated 4.4.2005 directed the petitioner to implead them as party-respondents and issued notice upon them. However, it is reported that those respondents have refused to accept the notice of this Court. Under the circumstances, this Court has no other alternative but to decide and dispose of the present Special Civil Application finally in absence of those respondents No. 4 to 20.

3. The petitioner was the owner of land bearing Revenue Survey No. 338, Northern part of Katargam. Town Planning Scheme No.4 came to be introduced and declared with regard to the land in question, and in lieu of Revenue Survey No. 338 the petitioner is allotted Final Plot No. 7/B/1 and Final Plot No. 7/B/2. The respondents No. 4 to 20 are in illegal occupation and possession of some of the portion of the land bearing Final Plot No. 7/B/1 and Final Plot No. 7/B/2, i.e., land which is allotted to the petitioner under the Town Planning Scheme No.4 which

has become final. It appears, that one of the occupants had preferred Special Civil Application No. 5323 of 1992 before this Court challenging the notices issued by the appropriate authority under Section 68 of The Gujarat Town Planning and Urban Development Act {“the Act” for short } by which they were directed to be removed and the said Special Civil Application came to be dismissed by the learned Single Judge of this Court (Coram: Mr. K.A. Puj, J.) by judgment and order dated 17th April 2003. In Para 7 of the said judgment it is observed as under;

> “7) After having heard the learned advocates appearing for the respective parties and after having gone through the record of the case and after perusing the pleadings contained in the petition as well as affidavit in reply and also after having gone through the authority relied on by the learned advocates appearing for the respondents, I am of the view that despite the proper notices given by the respondent-Corporation neither any reply was filed nor any explanation was tendered by the petitioner. The petitioner was not in a position to state as to in what capacity and under what right he was occupying the said land. The unauthorised occupation for a period of 10 to 15 years, as alleged in the petition, would not confer any legal right on the petitioner or any other similarly situated persons and on that basis they cannot claim their ownership or occupancy over the land. There is also no dispute about the fact that

> the town planning scheme was sanctioned much earlier and under that sanctioned scheme the disputed land was allotted to the respondent No.3 and since the respondent No.3 has already handed over the vacant possession of his original plot, he is certainly entitled to this newly allotted plot, over which the possession was retained by the petitioner.”

It is the case of the petitioner that inspite of dismissal of the aforesaid Special Civil Application and inspite of the fact that the petitioner is allotted Final Plot No. 7/B/1 and Final Plot No. 7/B/2 under the finalised Town Planning Scheme No.4 the respondents No. 2 and 3, the authorities under the Act are not implementing the Town Planning Scheme fully and are not handing over the peaceful and vacant possession of the aforesaid two final plots to the petitioner by removing the encroachment and the persons who are in illegal occupation of the lands in question. He has submitted that the petitioner had time and again approached the respondents No. 2 and 3 and though the town planning scheme has become final long back the petitioner is not handed over the peaceful and vacant possession of the land in question and therefore the present Special Civil Application is filed for the aforesaid reliefs.

4. In response to the notice issued by this Court, Shri Prashant G. Desai, learned advocate

appears on behalf of respondents No. 2 and 3 the appropriate authorities under the provisions of the Act. He is not disputing that the Town Planning Scheme has become final and the petitioner is allotted lands bearing Final Plot No. 7/B/1 and Final Plot No. 7/B/2 under the said finalised town planning scheme. He has submitted that the respondent authorities have issued notices upon the persons who are in illegal occupation and possession of the lands in question for removal under Section 68 of the Act. However, the fact remains that till date the petitioner is not handed over peaceful and vacant possession of the plots which are allotted to him under the finalised town planning scheme. Shri Desai is not in a position to justify the action of not implementing the finalised Town Planning Scheme by handing over peaceful and vacant possession of the land in question to the petitioner.

5. An identical question came to be considered by this Court in the case of Amarsinh Thakore Vs. State of Gujarat, reported in (2004) 7 G.H.J. Page 27, and relying upon the Hon'ble Supreme Court in the case of Municipal Corporation of Greater Bombay and Another Vs. Advance Builders (India) Pvt.Ltd., and Others, reported in AIR 1972 Supreme Court Page 793, this Court has held that it is the bounden and correspondent duty on the part of the Corporation to perform statutory duty and hand over the peaceful and vacant possession of the plot which

is allotted to a person under the finalised Town Planning Scheme. This Court has also held in the said judgment and order relying upon the judgment of the Hon'ble Supreme Court that even the Municipal Corporation is required to remove the unauthorised construction which is there on the land in question. Considering the Judgment of the Hon'ble Supreme Court in the case of *Municipal Corporation of Greater Bombay (supra)* and the Judgment of this Court in the case of *Amarsinh Thakore,(supra)* the petition is required to be allowed, and the respondents No. 2 and 3 are required to be directed to implement the Town Planning Scheme No.4 which has become final long back and to hand over the peaceful and vacant possession of the plot which is allotted to the petitioner as early as possible by removing the unauthorised construction and the persons who are in illegal occupation of the lands in question.

6. For the reasons stated hereinabove, the petition succeeds. The respondents No. 2 and 3 are directed to implement the Town Planning Scheme No.4 and are further directed to hand over the peaceful and vacant possession of the land in question to the petitioners, i.e., Final Plot No. 7/B/1 and Final Plot No. 7/B/2 as early as possible preferably within the period of 4 months from the date of receipt of this order. Rule is made absolute to the aforesaid

extent. However, there will be no order as to costs. If the respondents No. 4 to 20 are aggrieved by this direction, they may approach this Court by way of appropriate application within the period of four weeks from today.

[M.R. Shah, J.]

RMR.